IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 568 OF 2005

Girish Iswarlal Popat ..Petitioner.

Versus

The Divisional Joint Registrar
Co-op.Societies & Ors. ..Respondents

Mr. Shyam Divan, Sr. Advocate with Mr. Vivek N. Kantawala i/by Kantawala & Co..for the Petitioner.

Mr. A.H.Palekar, AGP for Respondents 1 to 3 & 19.

Mr. S.V. Pitre for Respondents Nos. 4 & 5.

Mr. Hemant H. Dave for Respondents Nos. 6 to 11.

Mr. Mahesh Subramaniam for Respondent Nos. 12 & 15.

Mr. Vivek M. Sharma for Respondent No. 14.

CORAM : S. A. BOBDE, J.
DATED : 06th SEPTEMBER,2005.

P.C.:

1. Rule, returnable forthwith.

Mr. Palekar, AGP waives service of rule on behalf of the respondents Nos. 1 to 3 and 19. Mr. Pitre, Advocate waives service of rule on behalf of the respondent Nos.4 & 5. Mr. Hemant Dave, Advocate waives service of rule on behalf of respondents Nos. 6 to 11. Mr. Mahesh Subramaniam, Advocate waives service of rule on behalf of respondents Nos. 12 and 15

and Mr. Vivek M. Sharma waives service of rule on behalf of respondent No.14.

2. Heard by consent.

3. The petitioner has challenged the order of the Divisional Joint Registrar, Co-op. Societies, Pune dated 06.12.2004. By the impugned order, the Divisional Joint Registrar set aside the decision dated 07.08.2001 of the Dy. District Registrar, Co-operative Societies, Pune, purporting to certify that the petitioner Girish Iswarlal Popat along with Anil Iswarlal Popat and Vishal Anil Popat, are amongst the 11 promoter members at the time of registration of the Society. The dispute is between the parties, who were original promoter- members. According to the petitioner, he alongwith the other two members of the Popat family were amongst 11 promoter members when the society was registered in the year 1994.

4. According to the respondents, the petitioner and the other two members of the Popat family were not the original promoter members which is evident from the bye-laws certified in the year 2001.

5. The learned counsel for the petitioner,

however, submits that these byelaws are fabricated and fraudulent and this fact is said to have been admitted by the Assistant Registrar one Shri Gade and therefore, the decision dated 7th August, 2001 of the Dy. District Registrar, is correct.

6. Having heard the parties for quite some time, it appears that the so-called decision dated 7th August, 2001 is not based on any evidence. This is merely in the nature of a certificate. There is no mention of if having been passed after hearing the parties or after receiving any evidence. The order is not passed in a lis.

7. It, however, appears that since the Deputy District Registrar certified the member of the Popat family as original promoter members, the respondents filed revision under section 154 of the Maharashtra Co-operative Societies Act. I am of view that such decision of the Deputy District Registrar was not revisable at all since section 154, contemplates revision of a decision or an order passed in any enquiry or proceedings, which admittedly, has not been instituted by either of the contesting parties. It must be made clear that an order or a decision, which has been passed without holding valid proceedings or

an enquiry, even though instituted and required to be decided in accordance with procedure prescribed by law, would be revisable. But that is not the case here. The revision has been entertained against a mere certificate. In the circumstances, it is clear that the order of the Divisional Joint Registrar purported to have been passed in exercise of revisional jurisdiction under section 154 to the extent that it declares that the names in the certificate dated 15.5.1994 which excludes the name of the petitioner and two others, who are the members of the Popat family, is equally in excess of jurisdiction and liable to be set aside. It is, therefore, accordingly set aside.

8. This, however, does not resolve the main dispute between the parties since it appears that the certain members of the Co-operative Society excluding the members of the Popat family have alienated or are in the process of alienating certain lands belonging to the society to third party. In the circumstances, the only recourse is to relegate the parties to such remedy as may be advised under the provisions of the Maharashtra Co-opertive Societies Act. The petitioner who challenges the exclusion of his name alongwith the two other members of the Popat family in the order of

the Divisional Joint Registrar, Co-opertive Society, Pune i.e. by the impugned order, may file a dispute under the Act before the competent court and pray for such relief as may be advised. The petitioner is at liberty to apply for interlocutory orders therein. The petitioner undertakes to file a dispute under the Act within a period of four weeks from today. The undertaking is accepted. With a view to prevent the property of the society from alienation by allegedly unauthorised persons, the respondent No.5 who is present in the court undertakes on his own behalf and on behalf of the society namely, Ganatra Grace Co-operative Housing Society Ltd., that they shall not alienate any property of the society for a period of two months after the dispute is filed. The undertaking is accepted. Thereafter, the question of right to alienate regarding functioning of the society in carrying on its business, including any matter pertaining to alienation of its property, shall be governed by such interim order as may be passed by a competent court.

9. This order shall not prevent any other party from asserting his or its right, as may be advised in accordance with law.

10. The dispute shall be decided on its own merits without being influenced by any earlier observations

of any court.

11. Rule disposed of in the above terms.

DT.06.09.05 (S.A.BOBDE,J)

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